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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

GARY FURSTENFELD, Plaintiff and Appellant, v. GENE R. ANDERSON et al., Defendants and Respondents.	D036132 (Super. Ct. No. EC019379)

APPEAL from an order of the Superior Court of San Diego County, William J. Howatt, Jr., Judge. Reversed.

Appellant Gary Furstenfeld owns a parcel of land (the land), portions of which were leased to tenants. In the present action, Furstenfeld alleged that Gene and Kevin Anderson (respondents), acting on behalf of Steele Canyon Homeowners Association, engaged in conduct designed to disrupt and interfere with Furstenfeld's ability to market the land to prospective buyers or rent it to prospective tenants.

In March 2000 respondents moved to dismiss the action on the ground that the action was not ripe and therefore was not justiciable. Respondents contended that because Furstenfeld had granted an option to purchase the land to one of his tenants the term of which did not expire until November 30, 2000, Furstenfeld could not sell the land prior to that date, and therefore could not have suffered any damages caused by the alleged acts of respondents. The trial court agreed Furstenfeld could not have suffered any damages until the option rights were extinguished, and granted the motion to dismiss. Furstenfeld appeals.

1. The Appeal Is Timely

Respondents first argue the appeal must be dismissed because Furstenfeld's notice of appeal, filed July 21, 2000, was untimely because it was not filed within 60 days after service of the order dismissing the complaint. Respondents assert that the trial court's written "Decision on Submitted Motions," filed May 15, 2000, and served by the clerk, which included the court's ruling that the action was not ripe and should therefore be dismissed, was the appealable order and was filed more than 60 days before Furstenfeld filed his notice of appeal. Furstenfeld contends, however, that his appeal was timely because the court's "Order of Dismissal" was not filed and served by the clerk until May 22, 2000, and Furstenfeld's notice of appeal was filed within 60 days after the order.

Rule 2 of the California Rules of Court prior to January 1, 2002, read in pertinent part:

> "(a) [Normal time] Except as otherwise provided . . . , a notice of appeal from a judgment shall be filed on or before the earliest of the following dates: (1) 60 days after the date of mailing by the clerk of

> the court of *a document entitled 'notice of entry' of judgment*; (2) 60 days after the date of service of a document entitled 'notice of entry' of judgment by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; or (3) 180 days after the date of entry of the judgment. . . .
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> "(b) [What constitutes entry] For the purposes of this rule: . . . (2) The date of entry of an appealable order [that] is entered in the minutes shall be the date of its entry in the permanent minutes, *unless the minute order entered expressly directs that a written order be prepared, signed, and filed, in which case the date of entry shall be the date of filing of the signed order*. . . ." (Italics added.)

The italicized portions of rule 2 demonstrate the notice of appeal was timely. First, the document filed and served by the clerk on May 15, 2000, was not "entitled [a] 'notice of entry' of judgment" as required by rule 2, subdivision (a)(1), and therefore did not commence the 60-day notice of appeal period. (Cf. *Hughey v. City of Hayward* (1994) 24 Cal.App.4th 206, 210.) Secondly, even if the May 15, 2000, written decision by the court would otherwise have been an appealable order entered in the minutes, when such an order expressly directs that a written order is to be prepared, signed and filed, rule 2, subdivision (b)(2) specifies that "the date of entry shall be the date of filing of the signed order" that is subsequently prepared, signed and filed as contemplated by the earlier order. The written decision here declared the matter was to be dismissed but also ordered that respondents "prepare and submit . . . an Order in conformity with the Court's Ruling . . . ." Under subdivision (b)(2), the date of entry of the order of dismissal was May 22, 2000, and Furstenfeld timely appealed from that order. We therefore reject respondents' argument that the appeal must be dismissed.

2. The Option Did Not Preclude Furstenfeld from Selling the Land, and Therefore Respondents' Acts Could Have Interfered with Furstenfeld's Ability to Sell the Land

Respondents' motion to dismiss for lack of *ripeness* was based on the predicate that because Furstenfeld had granted a third party an option to purchase the land, Furstenfeld was prohibited from selling the land prior to expiration of the term of this option (November 30, 2000). From this predicate, respondents argued that Furstenfeld could not have suffered any damages from their alleged interference prior to that point in time and therefore his claim was premature.[1] The trial court agreed and dismissed the complaint.

Respondents' argument is based on an incorrect predicate, and the trial court's order of dismissal must be reversed. The grant of an option to purchase is not equivalent to a sale of property, but instead is a sale of a right to purchase. (*Rollins v. Stokes* (1981) 123 Cal.App.3d 701, 709; *Anthony v. Enzler* (1976) 61 Cal.App.3d 872, 876.) "It is, in other words, a unilateral contract under which the optionee, for consideration he has given, receives from the optionor the right and the power to create a contract of purchase during the life of the option." (*Erich v. Granoff* (1980) 109 Cal.App.3d 920, 927.) In the context of an unexercised option to purchase contained in a lease, the option becomes a covenant running with the land (*Chapman v. Great Western Gypsum Co.* (1932) 216 Cal. 420, 425; *Maron v. Howard* (1968) 258 Cal.App.2d 473, 484), and a subsequent

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1 Respondents argued that Furstenfeld would only suffer injury, and his cause of action become ripe, after (1) the optionee declined to purchase the land and (2) Furstenfeld was thereafter unable to sell the land as the result of respondents' conduct.

purchaser of property subject to an option who takes title with notice of the existence of the option takes title subject to the right of the optionee to complete the purchase. (*Andrade v. Casteel* (1947) 81 Cal.App.2d 729, 731; *Smith v. Bangham* (1909) 156 Cal. 359, 365; *Copple v. Aigeltinger* (1914) 167 Cal. 706, 710.)

The alleged existence of the option did not disable Furstenfeld from selling his land. Instead, the only impact of the alleged option was that any purchaser with actual or constructive knowledge of the option would have acquired title subject to the optionee's rights under the option. Accordingly, Furstenfeld could have been harmed by respondents' interference with his attempt to sell the land, and the trial court erred by dismissing the complaint.

DISPOSITION

The order dismissing the complaint is reversed. Furstenfeld shall recover his costs on appeal.

McDONALD, J.

WE CONCUR:

KREMER, P. J.

BENKE, J.